

Remarks

Claims 1-41 are pending. In the Office Action mailed January 8, 2007, the Examiner required an Election for the following species:

- 1) one or more antifatulents;
- 2) one or more competitive reversible histamine H₁-receptor antagonists;
- 3) one or more prebiotics; and
- 4) one or more probiotics

Applicants elect the following with traverse:

Simethicone as the one or more antifatulent

Diphenhydramine as the one or more antagonist

Larch arabinogalactans as the one or more prebiotic, and

Bifidobacterium infantis as the one or more probiotic

Claims 1-41 are readable on the elected species and are elected for prosecution in the above-identified application.

Applicant respectfully traverses the election of species on the grounds that a restriction requirement between asserted patentably distinct inventions is proper only when there is a serious burden on the Patent Office to examine all of the claims in a single application even when it appears that appropriate reasons exist for a restriction requirement. M.P.E.P. § 803. Applicant respectfully submits that there is no serious burden on the Patent Office to examine all the antifatulents, antagonists, prebiotics and probiotics in a single application as the species referred to in the official action are simply different embodiments of the same invention.

Applicant has presented a generic invention with generic claims and set forth a number of embodiments falling within the generic invention. It is believed that Claims 1-41 are generic to a plurality of species.

Applicants understand that (a) the species election requirement will be withdrawn upon the finding of an allowable genus; and (b) additional species will be considered in this application.

Applicant respectfully requests reconsideration and withdrawal of the restriction/election requirements and request prosecution of the application in its entirety. However, in response to the requirement, Applicant specifically reserves the right to file divisional applications drawn to the non-elected subject matter.

Accordingly, it is respectfully submitted that the current election of species is sufficient and in compliance with 35 U.S.C. 121. However, if any issues remain outstanding, the Examiner is respectfully requested to contact the undersigned so the prosecution may be expedited.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Aamer S. Ahmed

Registration No. 58,958

600 13th Street, N.W.
Washington, DC 20005-3096
Phone: 202.756.8000 ASA:MWE
Facsimile: 202.756.8087
Date: February 27, 2007

**Please recognize our Customer No. 20277
as our correspondence address.**